

## Internal Revenue Service, Treasury

## § 1.72-1

under the decree will be subject to the rules of section 71, as amended by the Tax Reform Act of 1984.

Section 71, as amended, also applies to any divorce or separation instrument executed (or treated as executed) before January 1, 1985 that has been modified on or after January 1, 1985, if such modification expressly provides that section 71, as amended by the Tax Reform Act of 1984, shall apply to the instrument as modified. In this case, section 71, as amended, is effective with respect to payments made after the date the instrument is modified.

(Secs. 1041(d)(4) (98 Stat. 798, 26 U.S.C. 1041(d)(4), 152(e)(2)(A) (98 Stat. 802, 26 U.S.C. 152(e)(2)(A), 215(c) (98 Stat. 800, 26 U.S.C. 215(c)) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

[T.D. 7973, 49 FR 34455, Aug. 31, 1984; 49 FR 36645, Sept. 19, 1984]

### **§ 1.71-2 Effective date; taxable years ending after March 31, 1954, subject to the Internal Revenue Code of 1939.**

Pursuant to section 7851(a)(1)(C), the regulations prescribed in § 1.71-1, to the extent that they relate to payments under a written separation agreement executed after August 16, 1954, and to the extent that they relate to payments under a decree for support received after August 16, 1954, under a decree entered after March 1, 1954, shall also apply to taxable years beginning before January 1, 1954, and ending after August 16, 1954, although such years are subject to the Internal Revenue Code of 1939.

### **§ 1.72-1 Introduction.**

(a) *General principle.* Section 72 prescribes rules relating to the inclusion in gross income of amounts received under a life insurance, endowment, or annuity contract unless such amounts are specifically excluded from gross income under other provisions of Chapter 1 of the Code. In general, these rules provide that amounts subject to the provisions of section 72 are includible in the gross income of the recipient except to the extent that they are considered to represent a reduction or return of premiums or other consideration paid.

(b) *Amounts to be considered as a return of premiums.* For the purpose of determining the extent to which amounts received represent a reduction or return of premiums or other consideration paid, the provisions of section 72 distinguish between “amounts received as an annuity” and “amounts not received as an annuity”. In general, “amounts received as an annuity” are amounts which are payable at regular intervals over a period of more than one full year from the date on which they are deemed to begin, provided the total of the amounts so payable or the period for which they are to be paid can be determined as of that date. See paragraph (b) (2) and (3) of § 1.72-2. Any other amounts to which the provisions of section 72 apply are considered to be “amounts not received as an annuity”. See § 1.72-11.

(c) *“Amounts received as an annuity.”*  
(1) In the case of “amounts received as an annuity” (other than certain employees’ annuities described in section 72(d) and in § 1.72-13), a proportionate part of each amount so received is considered to represent a return of premiums or other consideration paid. The proportionate part of each annuity payment which is thus excludable from gross income is determined by the ratio which the investment in the contract as of the date on which the annuity is deemed to begin bears to the expected return under the contract as of that date. See § 1.72-4.

(2) In the case of employees’ annuities of the type described in section 72(d), no amount received as an annuity in a taxable year to which the Internal Revenue Code of 1954 applies is includible in the gross income of a recipient until the aggregate of all amounts received thereunder and excluded from gross income under the applicable income tax law exceeds the consideration contributed (or deemed contributed) by the employee under § 1.72-8. Thereafter, all amounts so received are includible in the gross income of the recipient. See § 1.72-13.

(d) *“Amounts not received as an annuity.”* In the case of “amounts not received as an annuity”, if such amounts are received after an annuity has begun and during its continuance, amounts so received are generally includible in the